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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

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## No. 592

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STREET & SMITH PUBLICATIONS, INC., A CORPORATION,

*Petitioner,*

*vs.*

DANIEL A. BLAIR, JUDGE OF THE DISTRICT COURT OF LUBBOCK COUNTY, TEXAS, 72ND JUDICIAL DISTRICT; LILLIE SPIKES, FRED SPIKES, FREDDA SPIKES HUNT, HOUSTON SPIKES AND JOHN VELTON SPIKES.

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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS.**

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS.

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*To the Honorable Supreme Court of the United States:*

Your petitioner respectfully shows:

### I.

### Summary Statement of the Matter Involved.

Your petitioner is a corporation organized and existing under and by virtue of the laws of the State of New York, where it is domiciled. The respondents, Lillie Spikes, Fred Spikes, Fredda Spikes Hunt, Houston Spikes and John

Velton Spikes, have filed suit against the petitioner for damages amounting to Fifty Thousand and No/100—($50,000.00)—Dollars. The suit was filed in the 72nd District Court of Lubbock County, Texas, presided over by the respondent, District Judge Daniel A. Blair. The respondents have sought to bring the petitioner into the said State court by attempting the service of process in said suit upon one K. H. Page, a resident of the City of Fort Worth, in Tarrant County, Texas, who is alleged in the said State court suit to be the agent of the petitioner. The uncontroverted facts show that the said K. H. Page is not in any sense the agent of petitioner and is not an employee or officer of the petitioner, and the uncontroverted facts likewise show that the petitioner has never done business in the State of Texas, has never been present in the State of Texas, and has never consented to be sued in the State of Texas. The next term of the 72nd District Court convenes in Lubbock County, Texas, on the 4th day of November, 1940. The uncontroverted facts show that the District Judge will ignore the lack of service on the petitioner and will ignore the lack of jurisdiction of his court over the person of the petitioner, and at the request of the other respondents, will on that date enter judgment against the petitioner for the said sum of $50,000.00, unless the petitioner submits itself to the jurisdiction of the said State court and files an answer, or unless the Judge of the State court is required by the Supreme Court of the United States to desist from doing so.

On the 12th day of October, 1940, the Petitioner presented to the Supreme Court of the State of Texas, a court of last resort, a petition for mandamus, setting forth the facts hereinbefore stated and praying for writ of mandamus, prohibition and injunction against the said District Judge for the relief required by the Petitioner, and presented therewith

an argument on said petition, and filed in the said court its motion for leave to file such petition for mandamus and argument.

On the 16th day of October, 1940, the Supreme Court of Texas entered its order denying the said motion. Such order is a final judgment of the Supreme Court of Texas.

II.

**Reasons Relied On for the Allowance of the Writ.**

The said Supreme Court of Texas in the said case, denying the motion of the Petitioner, decided a Federal question of substance as to due process of law under the Fourteenth Amendment to the Federal Constitution in favor of the respondents herein by holding that the petitioner was not entitled to the mandamus sought, which decision is not in accord with the decisions of this Court, including the cases of *Michigan Central R. Company* v. *Mix*, 278 U. S. 492, 73 L. Ed. 470; and *Consolidated Textile Corporation* v. *Gregory*, 289 U. S. 85, 77 L. Ed. 1047.

The petitioner herein, as a New York corporation not doing business in Texas and not present in Texas, is entitled to the protection provided for it by the Fourteenth Amendment to the Constitution of the United States providing that no State shall deprive any person of its property without due process of law. This question was presented to the Supreme Court of Texas in the petition for mandamus which was denied by the said Supreme Court of Texas in direct conflict with the said provision of the Federal Constitution and the case of *Michigan Central R. Company* v. *Mix, supra.*

The premises considered, petitioner prays that writ of certiorari be issued by this Court to the Supreme Court of the State of Texas commanding the said Supreme Court of the State of Texas to certify and to send to this Court a

full and complete transcript of the record and of the proceedings of the said Supreme Court of Texas had in said case to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States; and that the judgment of the said Supreme Court of Texas be reversed by this Court and for such further relief as to this Court may seem proper.

J. I. KILPATRICK,
*Lubbock, Texas,*
E. L. KLETT,
*Lubbock, Texas,*
*Attorneys for Petitioner.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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### I.

### Opinions of the Court Below.

The Supreme Court of Texas wrote no opinion in this matter.

### II.

### Jurisdiction.

1. The decree to be reviewed is dated October 16, 1940 (R. 58).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is R. S. 690, 709; Title 28 U. S. C. A., Sec. 344 (b): "where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution".

### III.

### Statement of the Case.

The statement of this case made in the preceding petition is here adopted.

### IV.

### Specification of Errors.

The Supreme Court of Texas erred in denying the writ prayed for by the petitioner.

### V.

### Argument.

The uncontroverted facts show that petitioner has never been present in the State of Texas, and that the Texas

courts have never had jurisdiction over its person, and that it has no agent within the State of Texas; the uncontroverted facts show further that notwithstanding the circumstances, the respondent, the District Judge of the 72nd Judicial District of Texas, will proceed to trial of the suit filed against petitioner by the other respondents herein disregarding the lack of jurisdiction and the lack of service. These facts are shown by the evidence of the petitioner's officers taken by deposition and by the evidence of the alleged agent, K. H. Page, taken in another case in which petitioner was defendant (R. 31-53).

The Supreme Court of the State of Texas, under Articles 1733 and 1734 of the Texas Statute, had jurisdiction of the petition for mandamus filed therein by the petitioner.

The relief sought by the petitioner has been previously granted by the Supreme Court of Texas. *Seagraves* v. *Green,* 288 S. W. 417; *State* v. *Ferguson,* 125 S. W. (2d) 272.

The circumstances in which petitioner finds itself are almost exactly like those described in the case of *Michigan Central R. Company* v. *Mix,* 278 U. S. 492, 73 L. Ed. 470.

The relief sought in this Court is the same as that sought by the petitioner in that case which was granted by this Court.

The relief sought is likewise the same as that sought by the petitioner in the case of *Consolidated Textile Corporation* v. *Gregory,* 289 U. S. 85; 77 L. Ed. 1047.

The protection claimed by the petitioner under the Fourteenth Amendment to the Federal Constitution was made the basis of the petition for mandamus filed in the Supreme Court of Texas and was made a part of its argument in support of its petition (R. 5 and 57).

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory

powers by granting a writ of certiorari and thereafter reviewing and reversing said decision.

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